

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA

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Jonathan & Doris Johnson, )  
Plaintiffs, )  
v. ) Civil Action No. \_\_\_\_\_  
Sun & Chang Corporation, ) Jury Demanded  
Defendant. )

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VERIFIED COMPLAINT  
FOR VIOLATIONS OF THE FAIR LABOR STANDARDS ACT

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COME NOW Plaintiffs Jonathan and Doris Johnson (hereinafter, “Mr. & Mrs. Johnson”), on behalf of themselves and all others similarly situated, by and through counsel, and for their Complaint against Defendant Sun & Chang, Inc. (hereinafter, “Sun & Chang”), state and allege as follows:

**NATURE OF THE COMPLAINT**

1. Mr. & Mrs. Johnson bring this action under federal law, specifically the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*
1. Mr. & Mrs. Johnson bring this action, on behalf of themselves and all others similarly situated, against Sun & Chang for unpaid minimum wage and overtime compensation, and related penalties and damages.
2. Sun & Chang's practices were and are in direct violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*

3. Sun & Chang's practices were and are in direct violation of Indiana's Wage Payment Statute.
4. For said violations, Mr. & Mrs. Johnson seek, on behalf of themselves and all others similarly situated, declaratory relief; compensation for work hours for which they were unpaid, including overtime premiums for all hours worked over forty hours in a work week; liquidated and/or other damages as permitted by applicable law; and attorney's fees, costs, and expenses incurred in this action.

### **PARTIES**

5. Mr. & Mrs. Johnson are adult residents of Glasgow, Barren County, Kentucky.
6. Plaintiffs and those similarly situated to her are employees of Defendant for FLSA purposes.
7. Members of the collective action and/or prospective members are those current and former employees of Sun & Chang's Jade Garden restaurants who were suffered or permitted to work for less than the minimum wage by Defendants and who were not paid overtime wages for hours worked over 40 in a workweek.
8. Upon information and belief, Defendant Sun & Chang, Inc. is an Indiana-based corporation, and may be reached for service through its registered agent, Yun Rong Sun, 920 Johnson Street, Elkhart, IN 46514.

### **JURISDICTION AND VENUE**

9. This Court has original federal question jurisdiction pursuant to 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*
10. This Court has personal jurisdiction over Sun & Chang because Sun & Chang conducts business in Elkhart, Elkhart County, Indiana, in this Judicial District.
11. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b) because a substantial part of the events giving rise to Mr. & Mrs. Johnson's claims occurred in this District.

**REPRESENTATIVE ACTION ALLEGATIONS**

12. Plaintiffs bring this Complaint as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who were, are, or will be employed by Defendants for the last three years from the commencement of this action, who were not been compensated for all hours worked, and/or who have not been compensated at one and one half times the regular rate of pay for all work performed in excess of forty hours per week, and/or who have been compensated at less than minimum wage for hours worked.
13. This Complaint may be brought and maintained as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), for all claims asserted by Plaintiffs because their claims are similar to collective action members or putative collection action members.
14. Plaintiffs, collective action members, and putative collective action members are similarly situated because they worked as non-exempt employees for Defendant, they had substantially similar job requirements and job duties as employees of Defendant, and were subject to Defendant's common practice, policy or plan of refusing to pay employees for all hours worked, refusing to pay an hourly rate of at least minimum wage for all hours worked, and failing to pay overtime wages for all hours worked over 40 in a workweek.

**FACTUAL BACKGROUND**

15. Mr. Johnson were hired by Sun & Chang on or about August 13, 2013.
16. Mrs. Johnson were hired by Sun & Chang in or about September 2013.
17. Mr. & Mrs. Johnson employment with Sun & Chang ended on or about December 20, 2019, when they resigned.
18. Mr. & Mrs. Johnson's both held the position of Cashier/Helper at Sun & Chang's Jade

Garden restaurant, and as such they should have been classified by Sun & Chang as non-exempt employees under the FLSA.

19. Mr. & Mrs. Johnson's job duties included answering the phone, counting the cash register, taking orders, waiting on customers, expediting orders to the cooks, and assisting with food preparation.
20. Sun & Chang paid Mr. & Mrs. Johnson a monthly flat rate of \$1700, paid twice monthly in the amount of \$850.
21. Mr. & Mrs. Johnson typically worked six days per week, eleven hours per day, for a total of 66 hours per week.
22. Mr. & Mrs. Johnson worked an average of 26 overtime hours per week.
23. Mr. & Mrs. Johnson and those similarly situated were not exempt from the right to receive overtime pay or to be paid for all hours worked under the FLSA.
24. Sun & Chang had the power to hire and fire Mr. & Mrs. Johnson and those similarly situated.
25. Sun & Chang controlled the number of hours Mr. & Mrs. Johnson and those similarly situated worked, as well as the rate and method of their payment.
26. Sun & Chang knew that Mr. & Mrs. Johnson and those similarly situated were being paid less than the minimum wage throughout the time in which they were employed by Sun & Chang.
27. Sun & Chang knew that Mr. & Mrs. Johnson and those similarly situated were working overtime in every week in which they were employed by Sun & Chang.
28. Despite this knowledge, Sun & Chang willfully failed to pay Mr. & Mrs. Johnson and those similarly situated at least the federal minimum wage for every hour worked and overtime pay for every hour worked in a workweek.

**COUNT I--VIOLATION OF THE FAIR LABOR STANDARDS ACT**

29. Mr. & Mrs. Johnson realleges and incorporates all allegations above as if actually set forth herein.
30. At all relevant times, Sun & Chang was an “employer” engaged in the interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. § 203.
31. At all relevant times, Sun & Chang employed Mr. & Mrs. Johnson.
32. At all relevant times, Sun & Chang had gross annual operating revenues in excess of Five Hundred Thousand Dollars and 00/100 cents (\$500,000.00).
33. The FLSA requires each covered employer, such as Sun & Chang, to compensate all non-exempt employees for all hours worked at an hourly rate of not less than minimum wage and compensate all non-exempt employees at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week.
34. Sun & Chang willfully failed to pay Mr. & Mrs. Johnson and those similarly situated at least the federal minimum wage for every hour worked and overtime pay for every hour worked in a workweek throughout the time in which they were employed by Sun & Chang.
35. As a result of Sun & Chang’s failure to compensate Mr. & Mrs. Johnson and those similarly situated for all hours worked and its failure to compensate them at a rate of not less than one and one-half times the regular rate of pay for all work performed in excess of forty hours in a work week, Sun & Chang has violated, and continues to violate, the FLSA, including 29 U.S.C. § 207(a)(1) and § 206(a).
36. The foregoing conduct, as alleged, constitutes willful violations of the FLSA within the meaning of 29 U.S.C. § 255(a).
37. The foregoing conduct, as alleged, also fails to meet the standard of good faith

compliance with the FLSA within the meaning of 29 U.S.C. § 260.

**COUNT II--VIOLATION OF INDIANA WAGE PAYMENT STATUTE**

38. Mr. & Mrs. Johnson realleges and incorporates all allegations above as if actually set forth herein.
39. At all relevant times, Sun & Chang was an “employer” pursuant to Indiana’s Wage Payment Statute, Indiana Code § 22-2-5-1.
40. Mr. & Mrs. Johnson and those similarly situated were not paid all of their wages in the correct amount in violation of the Wage Payment Statute.
41. Mr. & Mrs. Johnson and those similarly situated were not paid all of their wages in a timely fashion in violation of the Wage Payment Statute.
42. Sun & Chang do not have a good faith basis for failing to pay these wages in accordance with Indiana law.
43. Mr. & Mrs. Johnson and those similarly situated have been damaged by the violations of the Wage Payment Statute by Sun & Chang.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. & Mrs. Johnson and those similarly situated to them pray for relief as follows:

1. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and Indiana's Wage Payment Statute;
2. Pre-judgment interest, as provided by law;
3. An award of money damages for unpaid wages, including liquidated damages, front pay, back pay, and compensatory and punitive damages in an amount to be determined at trial;
4. Award Plaintiffs and those similarly situated costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees; and
5. Designation of this action as a collective action on behalf of the proposed members of the FLSA representative action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b);
6. Designation of Plaintiffs Jonathan Johnson and Doris Johnson as Representative Plaintiffs of the putative members of the FLSA representative action;
7. Any and all such other and further legal and equitable relief as this Court deems necessary, just, and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and those similarly situated hereby demands a jury trial on all causes of action and claims with respect to which he has a right to jury trial.

Respectfully submitted,

s/ Ron Weldy

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**DECLARATION AND VERIFICATION**

I, **Jonathan Johnson**, verify and declare that the facts stated in the foregoing Verified Complaint to the best of my knowledge and belief are true, and that the Complaint is not made out of levity or by collusion with the Defendant, but in sincerity and truth for the causes mentioned in the Complaint.



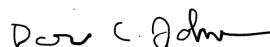
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**Jonathan Johnson**

Date: 03 / 19 / 2020

**DECLARATION AND VERIFICATION**

I, **Doris Johnson**, verify and declare that the facts stated in the foregoing Verified Complaint to the best of my knowledge and belief are true, and that the Complaint is not made out of levity or by collusion with the Defendant, but in sincerity and truth for the causes mentioned in the Complaint.



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**Doris Johnson**

Date: 03 / 19 / 2020

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## Document History

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